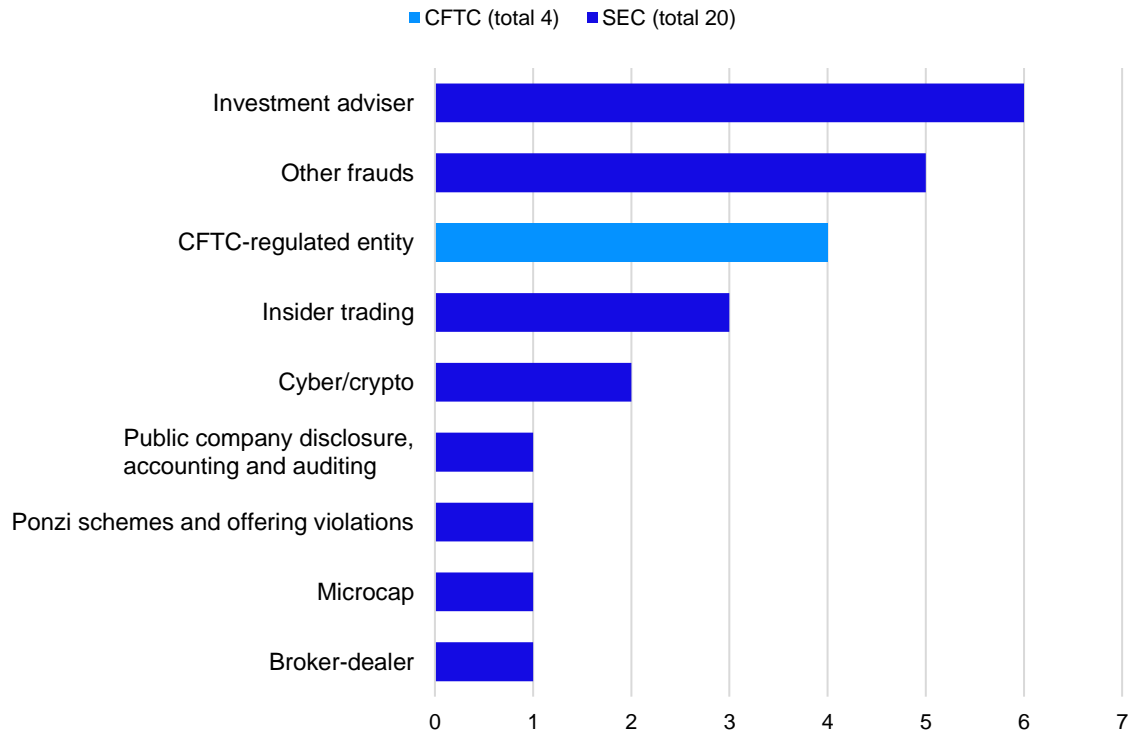


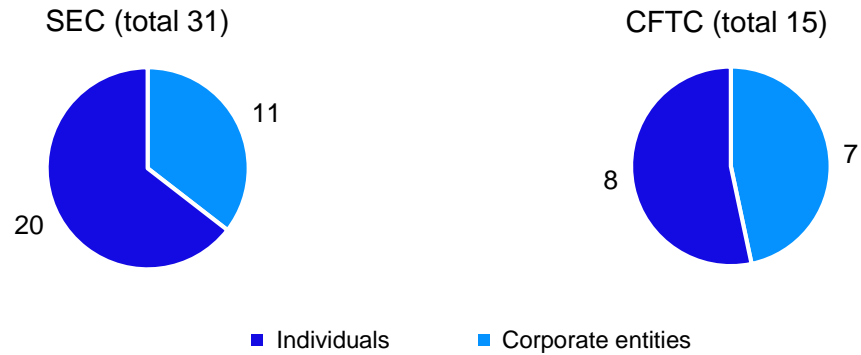
January 2022

In this edition of the update, we discuss enforcement developments at the agencies during January 2022. Beginning the calendar year slowly, the SEC filed 20 actions and the CFTC filed four (excluding follow-on actions, bars and suspensions) against a combined total of 46 defendants and respondents. The SEC’s actions included investment adviser violations, general fraud, and insider trading cases, among others. The CFTC’s actions concerned registration violations, misappropriation, and fraud.

Actions initiated by the SEC and CFTC in January 2022

Number of actions, by matter type





Key cases and developments

SEC settles with company without penalty after significant remedial efforts

SEC v. Headspin, Inc. (N.D. Ca. January 28, 2022, settled)

The SEC settled with a private technology company without imposing a penalty after the company undertook significant remedial efforts following an internal investigation into its former CEO. As Director of Enforcement Gurbir Grewal stated when announcing the settlement, “[f]or companies wondering what types of remedial actions and cooperation might be credited by the Commission after a company uncovers fraud, this case offers an excellent example.” The SEC alleged that over the course of at least two years, the company engaged in fraud through its CEO to increase its valuation to over \$1 billion by inflating its financial metrics and falsifying its internal sales records. According to the SEC, the company’s former CEO engaged in these actions while he controlled the vast majority of the company’s financial and sales operations. The company forced the resignation of its CEO, revised its valuation from \$1 billion to \$300 million, returned roughly 70% of principal to investors, hired new senior management (including a new CEO, COO, GC, and Controller), expanded its Board, and adopted new procedures to ensure accuracy in its financials. Because of these significant remedial actions, the SEC elected not to impose a penalty on the company.

[SEC press release](#) | [SEC complaint](#)

SEC shadow insider trading case survives motion to dismiss

SEC v. Matthew Panuwat (N.D. Ca. August 17, 2021, contested)

A novel SEC action alleging so-called “shadow insider trading” survived a motion to dismiss. The case arises from the actions of a former executive at a biopharmaceutical company. The company’s insider trading policy prohibited him from using nonpublic information to trade for his personal benefit in the company’s securities, or the securities of another publicly traded company—including significant collaborators, customers, partners, suppliers, or competitors of the company. According to the SEC, the individual purchased hundreds of out-of-the-money, short term call options in one of his company’s competitors after learning that his company would be acquired. The SEC alleges that he did so with the knowledge that the competitor’s stock would rise due to his company’s acquisition. This suit represents the SEC’s first attempt to extend the misappropriation theory of insider trading to cover trading in the securities of a company based on material nonpublic information about the acquisition of a different, economically similar company.

[SEC complaint](#) | [Davis Polk client update](#)

SEC settles with company over director independence disclosure issues

In re Leaf Group Ltd. (A.P. January 7, 2022, settled)

The SEC settled with an e-commerce company for allegedly failing to adequately evaluate and disclose the lack of independence of a director and board committee, as well as an “interlocking” board relationship between the same director and the company’s CEO. According to the SEC, the company materially

misstated that the director at issue was independent. In reality, the company's CEO served as a director and chaired the compensation committee of a separate company, for which this director served as CFO. The SEC alleged that this "compensation committee interlock" meant that the director could not qualify as independent and this should have been disclosed. The SEC additionally alleged that the company misstated the independence of a special committee it established to consider a company sale, and that it failed to maintain disclosure controls around all of these issues. The company agreed to pay a penalty of \$325,000.

[SEC press release](#) | [SEC order](#)

SEC brings suit alleging multi-million dollar insider trading scheme

SEC v. David Schottenstein et al. (D. Mass. January 6, 2022, contested)

The SEC brought a case against three individuals for allegedly trading in advance of market moving announcements relating to DSW, Inc., Rite Aid Corp., and a Canadian cannabis-related business. According to the SEC, one of the individuals used a family connection to obtain and trade on insider information about these three companies, including earnings announcements, a tender offer, and a planned merger. The SEC further alleges that one of the individuals tipped two close friends who made similar unlawful trades. The U.S. Attorney's Office for the District of Massachusetts has brought a parallel criminal case.

[SEC press release](#) | [SEC complaint](#)

SEC brings suit against lawyer, friend alleging insider trading

SEC v. David S. Sargent and Christopher M. Klundt (N.D. Ill. January 11, 2022, contested)

The SEC brought a case against two individuals based on allegations that they traded in advance of Chegg, Inc.'s positive quarterly earnings announcement. The SEC alleges that one of the individuals, a lawyer, wrongfully obtained material, nonpublic information from the second individual, a former Chegg employee. The lawyer allegedly used this information to purchase \$40,000 worth of Chegg stock and options, which the SEC alleges he then sold for profit. The U.S. Attorney's Office for the Northern District of Illinois has brought a parallel criminal case.

[SEC press release](#) | [SEC complaint](#)

CFTC brings case alleging a \$58 million foreign currency fraud scheme

CFTC v. Notus LLC, et al. (S.D. Fl. January 27, 2022, contested)

The CFTC filed a civil enforcement action against five individuals and five companies based on allegations that the five companies, under control of the five individuals, cooperated to fraudulently solicit and misappropriate at least \$58 million from customers. The CFTC alleges that, from 2018 to 2021, the five companies did business as an entity named "ROFX" which solicited over 1,100 customers to open trading accounts through the ROFX website. According to the CFTC, the five companies solicited customers by falsely claiming to trade forex and then misappropriated the customer funds by wiring them to non-trading entities in numerous foreign countries. The CFTC also alleges that the individuals, via ROFX, acted as futures commission merchants without registering with the CFTC.

[CFTC press release](#) | [CFTC complaint](#)

Whistleblower awards

The SEC announced whistleblower awards in connection with six different actions this month, with eight individuals receiving a total of more than \$57 million in whistleblower payments.

[SEC whistleblower page](#)

Personnel and organizational changes

The CFTC announced four notable personnel and organizational changes in January:

- Amanda Olear was named the Markets Participants Division Director.
- Rob Schwartz was named General Counsel.
- Clark Hutchinson was named Clearing and Risk Division Director.
- Suyash G. Paliwal was named International Affairs Office Director.

[CFTC press release](#)

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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